



The Hickory Regional Planning Commission will hold its regular meeting on **Wednesday, April 27, 2016 at 6:00 p.m. in the City Council Chambers of City Hall**. The following will be the agenda for the Regular Meeting:

AGENDA

- Parliamentary Call to Order
- Welcome
- Roll Call
- Items of Correspondence
- City Council Action
- Approval and Signing of Minutes from the March 23, 2016 Meeting

PRESENTATIONS AND PUBLIC HEARINGS

1. Transportation Planning – John Marshall, AICP, Director of Planning and Transportation, Western Piedmont Council of Governments.

OTHER BUSINESS

1. Hickory by Choice 2030 – Update to full Commission regarding the subcommittee's progress with the five year update of the Hickory by Choice 2030 Comprehensive Plan.

The Hickory Regional Planning Commission does not discriminate on the basis of disability in the provision of its service as charged by the City Council of the City of Hickory. All meetings are held in accessible facilities. Any person with a disability needing special accommodations should contact the Planning Department at telephone number (828) 323-7422 at least 48 hours prior to the scheduled meeting.

Attendance Roster	
FY 15-16	
Hickory Regional Planning Commission	
Catawba County	Jeff Kerley
Longview	Randall Mays
Catawba County	John Eldridge
Burke County	Vacant
Brookford	Vacant
Caldwell County	James Noggle
Ward 1	Bill McBrayer
Ward 2	Barabra Clemons
Ward 3	Junior Hedrick
Ward 4	Sam Hunt
Ward 5	Wallace Johnson
Ward 6	Shanua O'Brien

Key	A Absent AX Excused						No meeting		
	P Present						Vacant/Not yet appointed		
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
						P		P	P
		P		P		P		P	P
		P		AX		AX		AX	P
		P		P		P		P	P
		AX		AX		P		P	P
		P		P		P		P	P
		P		P		P		P	P
		A		P		P		P	P
		P		P		P		AX	P
		P		P		P		AX	A

Hickory Regional Planning Commission
Wednesday, March 23, 2016, 6:00 pm

A regular meeting of the Hickory Regional Planning Commission (HRPC) was held on Wednesday, March 23, 2016, 6:00 pm, in Council Chambers of the Julian G. Whitener Municipal Bldg., Hickory NC.

Members Present: Randall Mays, Jim Noggle, Bill McBrayer, Jeff Kerley, Barbara Clemons, Junior Hedrick, John Eldridge, Wallace Johnson and Sam Hunt

Members Excused: none

Members Absent: Shauna O'Brien

Others Present: Director of Planning and Development Services Brian Frazier, Planner Ross Zelenske, City Attorney John Crone and Minutes Clerk Anne Starnes

Parliamentary Call to Order & Welcome: Randall Mays, Chairman, called the meeting to order at 6:00 pm and welcomed everyone present.

Roll Call: Director of Planning and Development Services Brian Frazier stated a quorum was present, and City Attorney John Crone and Planner Ross Zelenske were also in attendance.

Items of Correspondence: none

City Council Action: Mr. Frazier said that due to the advertising requirements in the short month of February, the Planning Commission's last two agenda items would be on the April 5th City Council meeting agenda.

Approval and Signing of Minutes from the February 24, 2016 Meeting: Minutes of the previous meeting were distributed to members in advance. No changes, additions or deletions to the minutes were stated. Bill McBrayer moved, seconded by Wallace Johnson, to approve the February 24, 2016 meeting minutes as written. The motion carried unanimously.

PRESENTATIONS AND PUBLIC HEARINGS

Mr. Mays said there was one public hearing for a Special Use Permit on the agenda tonight. He reminded members the Ethics Awareness and Conflict of Interest Clause, which states that any member having a conflict of interest regarding any matter here tonight should identify it as such at this time, and recuse themselves. Mr. Mays asked if any member of the Commission had a known conflict of interest.

Jim Noggle said he believed that he should be recused from participation, because he may not be able to render a fair opinion on the application tonight.

City Attorney John Crone said he was sorry that Ms. Dula was unable to attend tonight. He said he believed Mr. Noggle was asking to be excused from participating in this matter tonight, due to an apparent or implied conflict of interest. Mr. Noggle said, yes. Mr. Crone asked Mr. Mays to take a vote to excuse Mr. Noggle.

Mr. Mays asked for a motion to recuse Mr. Noggle from participating in the public hearing.

Sam Hunt moved, seconded by Bill McBrayer, to recuse Mr. Noggle from participating in the public hearing for Special Use Permit 16-01. The motion carried unanimously, with Mr. Noggle abstaining.

Mr. Mays told Mr. Noggle he was excused from the public hearing. Mr. Noggle left the meeting.

Mr. Mays said that, for the public hearing portion of the meeting, any persons who want to speak in favor or against this petition tonight will come forward and be sworn in by the clerk, state their name, and any written evidence or materials should be submitted to the clerk as evidence.

1. Special Use Permit (SUP) 16-01. The request is made by Christopher Bryan Powe, agent for Lake Hickory Marina II, LLC, for the consideration of approval to open and operate a drinking establishment in the General Business (C-2) district. The subject property is located at 6706 Limbaugh Lane and identified as Caldwell County NC PIN 2793497844.

All speakers were sworn in by the Minutes Clerk.

Brian Frazier presented the Staff Report and referred to PowerPoint slides during his presentation. Referring to slides #2 & #3 (Special Use Permit 16-01), he said the applicant was C. Bryan Powe, the agent for Lake Hickory Marina II. The property location is 6706 Limbaugh Lane, in Caldwell County, but within the jurisdiction of the limits of the City of Hickory. The zoning is a General Business (C-2) District, and the property is just under 3-acres in size, and the request is for consideration of approval to open and operate a drinking establishment. Mr. Frazier said if he used the phrases bar and/or nightclub, that will mean the same as a drinking establishment.

Mr. Frazier said the Land Development Code states the definition of a drinking establishment as seen on this slide, *“An establishment where alcoholic beverages are obtainable within or thereon and where such beverages are consumed on the premises. This includes all bars, nightclubs, taverns, and other similar establishments. This excludes eating establishments where food sales exceed 50% of the facility’s total sales. If the facility also sells food, and the sale of food products represents more than 50% of the facility’s total sales, the facility shall be considered an eating establishment. Eating establishments are classified as Retail Sales and Service.”* Based on this definition, he said we are looking at this 50% rule – if the alcohol sales are greater than 50% of the gross annual revenue, the facility is considered a nightclub. He said he had clarified this with the applicant, and they had agreed with this definition; this is not going to be a restaurant.

Referring to slide #4 (Map 1: Aerial Photo), Mr. Frazier said this is a map of the area, showing northwest Hickory, Lake Hickory (Catawba River), the Water Treatment Plant, and the Highway 321 North bridge, both spans. He also pointed out Limbaugh Lane in the photo, which is a private road, and the marina property, with various docks and boat slips out in the lake.

Referring to slide # 5 (Map 2: Hickory by Choice 2030), Mr. Frazier said the map, Hickory by Choice 2030 Plan that shows the Future Land Use, and areas in white are not in the City of Hickory. He pointed out the color-coded land uses designated as Park, Public/Institutional and Water Bodies (Catawba River); also, the General Business and Medium Density Residential land uses.

Referring to slide #6 (Map 3: Zoning), Mr. Frazier said this zoning map shows the water body (Catawba River), the City of Hickory Zoning of C-2 (General Business), R-2 (Medium Density Residential – Single Family) which includes the subject property tonight, and Caldwell County Zoning of PDH-R5 (Planned Development Residential) and R-20 (Low Density Residential). He said this differentiates the land uses between the City of Hickory Zoning and Caldwell County Zoning.

Referring to slide #7 (Special Use Criteria, Consistency), Mr. Frazier said that, in terms of consistency with the Hickory by Choice 2030 Plan, the property is classified as (C-2) General Business, and the staff believes the existing development on the property has been developed in a pattern that does not appear to allow for the efficient provision of public services for additional development. He noted three points, including:

- 1) The marina can only be accessed from Limbaugh Lane, a private road, which does not meet the current minimum width standards within the City's Engineering Manual of Practice. Certain sections of the street appear to measure less than 16-feet in width; a minimum of 20-feet in width is necessary for this type of street. This poses a direct challenge for large emergency vehicles and boat trailer traffic attempting to enter or exit, specifically at the same time, because it is not wide enough for safe two-way traffic.
- 2) Limbaugh Lane is located directly off Highway 321 North. There is not a dedicated right-hand turn lane onto the private Limbaugh Lane from Highway 321, but there is a wide shoulder present, and their mailbox can be seen by the bridge. Access improvements would need to be made by the applicant, and signed off on by both the City of Hickory and NCDOT. He said the applicant did inform him that he talked to the Division of DOT that covers Caldwell County, located in Boone, and their staff member had said he did not have any concerns. Mr. Frazier said the City had not yet heard from NCDOT directly, and they have nothing to this effect in writing.
- 3) A portion of the parcel is located within the floodplain (Zone AE – no build zone), however, all buildings are located within the minimal flood hazard area (Zone X), and no new construction is proposed by the applicant.

Referring to slides #8 and #9 (Special Use Criteria, Compliance with the City's Land Development Code), Mr. Frazier said the uses of the property are varied, with multiple minimum parking standards that must be met. Slide #8, a chart, explained the uses and required minimum parking for each, including: single-unit caretaker apartment (2 spaces); manager/sales office (2 spaces); general store (3 spaces); boat repair/warehouse building (2 parking spaces); and, approximately 70 boat slips (35 parking spaces), for a minimum parking requirement of 44 parking spaces. He said a drinking establishment of approximately 1407 sq. ft. requires 12 spaces, bringing the total proposed need to 56 parking spaces.

Slide #9, a chart, explained the amount of parking the property is able to accommodate, including: paved parking area (22 spaces); gravel parking lot by apartment/office (7 spaces); and a gravel lot by proposed bar and boat repair building (17 spaces). Mr. Frazier said they could provide, right now, a total 46 available parking spaces, and staff believes they need, by City Code, 56 parking spaces. Also, he said that since there has never been an officially approved legal drinking establishment located there, it is considered a change of use, and the entire parking lot would need to be paved according to City standards.

Referring to slide #10 (Special Use Criteria, Compatibility with Adjacent Uses), Mr. Frazier said staff does not believe the marina and proposed use of a drinking establishment would be compatible with the adjacent residential neighborhood, without the complete compliance with the Land Development Code and other applicable regulations. In addition, he said certain conditions, such as hours of operation, noise standards, etc., on the proposed use may be necessary by the applicant, to improve compatibility. Staff has determined the overall property itself lacks the necessary space for all of the existing and proposed uses – there is not enough parking or vehicle ingress and egress, not enough turn-around, a lot of the space has been striped or marked off, designated by the City of Hickory Fire Department for fire lanes.

Mr. Frazier said the close proximity to the neighboring residential development is also a concern for staff. While a small landscape buffer exists, he said loud noises can still be heard between the subject property and neighboring residential areas. In the past, he said noise complaints had been an outstanding issue between neighbors and the previous operators of the marina, adding that staff understands this is a new management team. He said that limiting the hours of operation for the drinking establishment, as a condition, is not really enforceable, and this has been confirmed with Hickory Chief of Police Tom Adkins.

Mr. Frazier noted that all outdoor lighting, as well as solid waste storage, would be required to comply with the current Land Development Code, and currently, it does not.

Referring to slide #11 (Mitigation of Significant Impacts and Diminution in Value of Surrounding Properties), Mr. Frazier said environmental impacts from this proposed use would have to comply with all local, state, and federal regulations, basically Duke Energy, for patrol of the lake and river, and possibly the Army Corps of Engineers, the City of Hickory, etc. He said regarding the level of negative impact on neighboring residential property values from the operation of such a bar or drinking establishment, the staff cannot make that call, as it is not immediately clear. He said that, normally, such uses are not compatible, due to issues of noise, late night operations, and vehicle traffic. He said reasonable conditions possibly could be imposed on the application to mitigate future negative impacts.

Referring to slide #12 (Special Use Criteria – Levels of Service), Mr. Frazier said that when they received this application, they sent it out to all relevant departments and agencies to then see their written comments. He said the Fire Department said the property is not located within 1,000-feet of a fire hydrant located on a public water line; an existing dry hydrant on the property is the only access to a water supply. So, additional HFD resources and manpower would be required in the event of a fire. He said, as noted earlier, fire personnel would have difficulty entering the property, due to the limited street width, as sections of the existing private drive are as narrow as 12-feet in width. According to the Deputy City Fire Chief, fire apparatus would have difficulty turning around, due to the existing site layout. The building space for the bar, under state fire code, is only 49 patrons, using the existing business classification. Mr. Frazier said the bar manager told staff they are looking at having 70 patrons in the bar, so any increase resulting in a change of classification would not be approved by the Hickory Fire Department.

Mr. Frazier said that Hickory Chief of Police Tom Adkins and Major Thurman Whisnant advised him that an increase in noise and other complaints from neighbors is expected if there is a bar in that location. The previous “tiki bar” that was under different ownership, had resulted in multiple complaints from neighbors, according to Police records. So, they are saying that more policing, both land and water based, would be needed if the proposed use happens, because a lot of the traffic would be not only vehicular, but also boat traffic on the lake itself.

Referring to slide #13 (Special Use Criteria – Levels of Service), Mr. Frazier said that, as noted earlier, NCDOT would need to review the traffic impacts. There are plans to replace the bridge in the next several years; widening of Highway 321 will also occur over the next decade, although it is not yet funded, but it has been planned for and engineered. The expected increase in traffic generation and need for a right-hand turn lane would need to be evaluated by the NCDOT. He said Mr. Zelenske had talked with both Caldwell County and City of Hickory personnel responsible for water and sewer. Mr. Frazier said the marina is currently served by public water and private on-site septic, which appear to be providing sufficient services at the present time for the store, office, apartment, the slips and maintenance building. Caldwell County did not express any concern regarding the expected increase in demand for water service, they deemed it to be adequate, but Hickory Public Utilities and Caldwell County Environmental Health both state that an expansion of the septic system may be necessary, based on the proposed nightclub use. Although a Hickory sewer line runs along Highway 321, Utilities has advised that this line was not designed to be tapped into, and any future expansions to the private on-site sewer system would require approval from the Caldwell County Department of Environmental Health. He said multiple jurisdictions have oversight for this property.

Referring to slide #14 (Special Use Criteria – Levels of Service), Mr. Frazier said assurances of continued maintenance say the operation of the drinking establishment have to be in conformity with all applicable development standards of the Land Development Code. He said additional requirements may be imposed by the Planning Commission, prior to issuance of a permit. Also, the North Carolina ABC Commission, ALE, would need proof of a commercial permit before even considering allowing alcohol use by a

nightclub. Regarding buffering and screening, Mr. Frazier said a 15-foot wide landscape buffer is required by the Hickory Land Development Code when a drinking establishment abuts single-family residential uses. This requirement appears to be met by the existing foliage and topography along the property line.

Referring to slide #15 (Staff Recommendation), Mr. Frazier said staff does not currently recommend approval of the Special Use Permit for the proposed drinking establishment. Not all aspects of the project have been demonstrated by the applicant to comply with all applicable provisions of the City's Land Development Code. He said a major reason is that adding the proposed use, with limited ability to create additional parking areas, will only worsen the existing parking situation. Without adequate parking, issues with ingress/egress and blocking fire lanes may occur, risking the safety of the public. The other major reason is that public safety, transportation, and utility facilities/services are not available to serve the subject property while maintaining sufficient levels of service for existing development. The level of fire protection will not be adequate to protect the marina and nightclub; there are multiple issues related to fire apparatus maneuverability, water supply, and occupancy load. The Hickory Public Utilities Division and Caldwell County Environmental Health Division have relayed concerns regarding the ability of the existing septic system to handle the additional demand of the proposed drinking establishment/nightclub use, combined with the other uses. Previously approved Special Use Permits (03-19), from 2003, outlined conditions for future expansions, one of which included extending public sewer to the property. He said that, right now, this has not happened, and it appears to be problematic.

Referring to slide #16 (Conditions for Approval), Mr. Frazier said in the event the Planning Commission finds that all of the Special Use criteria are met and warrant approval of the Special Use Permit, staff would respectfully recommend the following conditions:

1. No outdoor entertainment and music shall be permitted.
2. All existing unpaved and gravel parking areas shall be paved and fully comply with the Land Development Code and other applicable regulations.
3. Additional signage and changes to existing signage shall comply with the Land Development Code and obtain separate permits.
4. All aspects of this project and any subsequent development shall comply with all applicable provisions of the Land Development Code, North Carolina Building Code, and North Carolina Fire Code.
5. The operation of the establishment must comply with all federal, state, and local regulations.

Mr. Frazier asked for questions from Commission members.

City Attorney John Crone asked if Mr. Frazier had any documents, including but not limited to the Staff Report, which he would like to submit as evidence in this quasi-judicial hearing. Mr. Frazier submitted the Staff Report to the Minutes Clerk, which was entered into the record as Exhibit A.

Mr. Crone said a quasi-judicial hearing is run like a courtroom, and the issue here is not whether someone is for or against, it is whether there is evidence that the petitioner has met the specific criteria that Mr. Frazier has put forth. Mr. Crone asked if there were any other questions from Commission members.

Mr. Kerley asked whether there would be any run-off as a result of the additional pavement discussed, since it would be paved instead of gravel. Mr. Frazier said yes, and this would be reviewed by Caldwell County's Department of Environmental Health, as well as Hickory's Engineering Division, specifically Hickory's storm water engineer. He said there would likely be interest by the State, too.

John Eldridge asked if there would be any other water access, in regards to the police. Mr. Frazier said there would be additional access, he believes, once Rotary-Geitner Park is improved, with the assistance of the Lackey family. There will be an additional access located there, for the police.

There were no additional questions from Commission members.

Mr. Crone said that, having heard no additional questions from members, were there any members of the audience who would like to, not cross-examine, but ask a question related to Mr. Frazier's testimony here that he has been sworn to and just given.

A member of the audience said no, not from someone with no socks on, no sir.

Mr. Crone again asked if anybody present had any questions.

A member of the audience asked what the actual impact cost to the City would be. Mr. Crone asked him to state his name for the record. He said his name is Phillip Shell, and that he lives directly above what used to be Mitchell's Marina, a long time ago. Mr. Crone thanked him, and invited him to ask any questions of Mr. Frazier. Mr. Shell said, oh no, he had a statement, and that would be fine.

Mr. Crone again asked if there were any questions from the audience. Another member of the audience, Patty Thompson, said that Hickory by Choice classifies their area as Primary Residential, and that she was holding (a copy of) the Master Land Use Plan and Analysis from a previous SUP request. Mr. Frazier said he believes that was a Caldwell County designation. He said that much of the neighborhood is under Caldwell County jurisdiction, their Planning Department. He said the marina itself, even though it is located in Caldwell County, falls into the City of Hickory limits, and its Planning Department and zoning jurisdiction.

Audience member Phillip Shell said, make friends with your neighbors, basically.

Audience member Jim Thompson said he lives 150-feet from the marina property, and asked Mr. Frazier to show on the map where the City of Hickory Water Treatment Plant's water intake pipe is located. Mr. Frazier, using the pointer, showed on the map where he believes the pipe is located. Mr. Thompson thanked him. Ms. Thompson said she disagreed, saying she had heard it went under the bridge. Mr. Frazier said he did not believe so, no, but then he is not Chuck Hansen, and so was not certain.

Audience member Phillip Shell said he had seen water bubbling up in front of the old police cabin there, so it should be about 150-feet away.

Ms. Thompson asked if Mr. Frazier could show the location of the marina's septic tank, and Mr. Frazier said he did not know the location. He asked Mr. Zelenske if he knew the location, and he did not know.

Ms. Thompson asked about the flood plain, and Mr. Frazier said, yes, it is in the flood plain, but it is not in the flood zone, so it is a little bit raised in elevation, several feet, depending on lake water levels. Mr. Thompson said, so generally speaking, the discharge through the septic tank and corresponding drain is going to go fairly close to where the City draws the water in. Mr. Frazier said he honestly does not know, he is not the City engineer and not familiar with all the operations of Public Utilities, and water intake. He said they do not have the current jurisdiction over the sewer, they have jurisdiction over the sewer line; but again, it cannot be tapped into, so Caldwell County Environmental Health has the jurisdictional authority over the current on-site septic waste system. Ms. Thompson asked if he could answer the question of, if they should they put a larger septic tank in there, where would they put that larger septic tank and how could they pump uphill from it. Mr. Frazier said that is why Caldwell County Environmental Health in Lenoir and Public Utilities believe that, if there are additional uses there, then they need to tap into the City of Hickory waste water system. Mr. Shell said, which you said is made not to be tapped into, and Mr. Frazier said, correct; anything can be done, but it has to be engineered and is not doable currently, without improvements by the applicant, with cooperation of both Caldwell County and the City of Hickory.

Ms. Thompson asked if Mr. Frazier had seen, or heard of, anyone bringing in an emergency vehicle to turn it around on the marina property, that she knew Caldwell County did this. Mr. Frazier said the City of Hickory Fire Department did this and it was very difficult, due to the size of the vehicle. He said an ambulance and the Fire Chief's vehicle were fine, but for a fire truck with a pumper, hook and ladder, it was very difficult.

Another audience member raised her hand, and Mr. Frazier asked Mr. Crone if questions could continue; Mr. Crone said, sure. She said she lives on Limbaugh Lane and it is definitely a one-vehicle passage road through there, not easy to do, and dangerous. She said the visibility is bad, once you reach the end of the road, out at the highway, and it is very difficult trying to get onto Highway 321 from Limbaugh Lane. She said the cars on Highway 321 are coming very fast, and it is difficult at all times, day or night.

Mr. Crone said he was not trying to cut her off, that she would have an opportunity to testify and say whatever she wanted to later. He asked if anyone had any other questions regarding Mr. Frazier's testimony.

Another audience member said the safety of the community would be at issue if a bar goes in there and drunks drive out onto Highway 321, and that she thinks this point needs to be made. Mr. Frazier said this issue would be up to the City of Hickory Police Department, and they are aware of the situation. This audience member said their family drives up and down that road, by the marina, so they have a vested interest in this.

Mr. Crone asked if there were any other questions for Mr. Frazier, and there were none.

Chairman Mays opened the Public Hearing for Special Use Permit 16-01. He reminded Commission members this is a quasi-judicial hearing and the policy allows persons in favor of the petition to speak first, followed by the opponents, and then there would be rebuttal time.

Mr. Crone asked if there was anyone present for the petitioner who would like to present evidence at this time.

Mr. Mays said several persons had signed up to speak in favor of this petition.

PROPONENTS

Troy Higgs addressed Commission members. He said he was born and raised in Catawba County and he had the privilege of serving his country, and now he has the opportunity to serve his community as well. He said that some of the issues discussed tonight, he had been made aware of, and he had taken all of these things into consideration when moving forward with everything they do at the marina, to better serve the community. He understands that noise was an issue for the homeowners directly behind the marina, and part of this stemmed from operations that were not permitted, operations where there was no permission given for them to be on the property. He said, now that this is moving forward, he had worked for the last year to re-establish the connection between City Hall and their company, to build that up in a positive fashion.

Mr. Higgs said he wanted to make one thing clear, that you would never see him applying for a permit to build a tiki bar, or set up anything outside, any kind of outside entertainment. He said safety is paramount, and as far as the sale of alcohol goes, he thinks ALE and the City of Hickory will police that very strictly. There is a set of standards that they will be held accountable for, and at any time they get out of line, as we all know, the permits would be taken from them and the operations shut down immediately.

Mr. Higgs said, as far as the parking goes, he made it a point to focus on the marina, to try and get it back to its grassroots, and what they need to do to open it up where it's a place where families can come in and enjoy the amenities, enjoy the lake. With that being said, he said they focused primarily on re-building the docks, making some nice docks for people to use. He said homeowners that do not live directly on the lake, but who own boats, can now come in, dock their boat there, and have access to the lake. He said they re-built two of the docks, and that is something they can offer to their community.

Mr. Higgs said that during his first conversation with Brian Frazier, he keyed him in on a couple of things that he had otherwise been unaware of, and the noise issue was the main one. He asked Mr. Frazier what would be the way to mend this broken relationship. Mr. Higgs said he came to the conclusion that if he took a year, did not apply for any permits for the bar, and gave himself time to let the operations go along with no issues, then hopefully the faith would be restored in the community. He said they do have the community's best interests in mind, and it is important to them to build a strong foundation and move forward toward longevity, not just come in, make some money, and go out in a flash. He said they want to still be there in 10 years, and that goal will not be met if they do not have support from the City and community.

Mr. Higgs said that any parking or other requirements that they have not met, if he is allowed the opportunity to address these, on a case by case basis, then he would take care of what is needed, so you would see that they will rise to the standard and meet these requirements. He closed his presentation.

Mr. Mays asked if there were any questions for Mr. Higgs.

Bill McBrayer asked if he is the proprietor of the business. Mr. Higgs said he manages the property.

Mr. Crone asked if there were any other questions from Commission members, and there were none.

Mr. Crone asked if Mr. Higgs had any written documents or anything that he would like to introduce as evidence and Mr. Higgs said no.

Mr. Crone asked if any member of the audience had a question they would like to ask Mr. Higgs.

Phillip Shell asked what the business hours and the opening schedule is for the marina. Mr. Higgs said it is seasonal, that he is also responsible for another marina, and they have not opened up yet. He said they have two employees who do come in, and it is a very modest operation, so there are no set business hours at this time. As the season progresses, he said they would have set hours, and place them on the doors for everyone's convenience.

Mr. Shell asked if the business was year-round, and Mr. Higgs said no, it is a seasonal operation.

There were no additional questions for Mr. Higgs.

Chad Burel addressed Commission members. He said he has lived in Hickory since the mid-90s, raising his five kids at his current address for the past 16 or 17 years. He grew up in Hillsboro, near Chapel Hill, and moved here after reading a *Reader's Digest* article about Hickory being one of the top 10 places to live and raise a family. He was starting to raise a family back then, was blessed with a job at Siecor and exited the Air Force to move here, built a house on the lake, raised a bushel of kids, and made a life here. Soon, like everyone else in town, he watched as manufacturing moved to Mexico, and ultimately to China, and he watched as the *Reader's Digest* article he read years prior became a thing of history, not a reality. He said we all observed that, it is the reality of Hickory.

Mr. Burel said he was here today, not because he is necessarily for or against a drinking establishment, although he did sign up to speak for it, but that he was here today to testify as to what he has known and observed at this marina over the last 16 years. He said he does not live immediately beside the marina, but he brings his kids to it to buy popsicles, night crawlers, and so on. He said he is personally familiar with Troy Higgs, and is a (marina) tenant, leasing a boat slip, and has gotten to know him. He said they have had a pretty close business relationship for about a year, involving the boat slip rental. He said his home is about ten minutes up the river, and he knew the previous operators, the guy who built the tiki hut, and also the marina operator that followed him. Mr. Burel said he would like to testify to his observations about the way Mr. Higgs conducts business operations, with the support of his partners, and testify to what he knows about the commercial needs on the lake, and the desires expressed to him by other people who use the lake.

Mr. Burel said he is familiar with the activities there in the past that raised problems on the lake, as he saw it happen, and did not know what to expect when he first met Mr. Higgs. In the year he has known him, he has observed that Mr. Higgs is a man of character – he says what he is going to do, and he does what he says; his reference to not pursuing a bar permit for a year is exactly what he said over a year ago. Mr. Burel said he had asked, “What are your plans for the marina?” and that Mr. Higgs has done exactly what he said he would do. He said that matters, and it was a different track record before. He said Mr. Higgs cares about the slips and anyone disorderly, as he has seen him intervene. He has seen the occasional undesirable action by certain young ladies, who were not behaving themselves in a seemly manner, and he watched Mr. Higgs march right down to their boat and ask them to get it straight, or leave.

First, he said he was here to testify that Mr. Higgs is a man of integrity, that he does what he says he will do. He has listened to Mr. Higgs’ strategy of being deliberately careful to re-build the bad relationship with the neighbors that resulted from the previous management teams, and Mr. Burel said he is glad to know him. He is an upstanding businessman, and he believes Mr. Higgs really does have the needs and desires of the community at heart, and as someone who was raised around here, has also seen the economy rise and fall over the years.

Second, Mr. Burel said he wanted to testify to the observations he has made and things he has been told, living and boating on the lake. This includes people who say there is nothing to do in this town. He said he was talking to Harold Deal yesterday, who is now in his 90s, and who built the original Catawba Queen, and helped create Rock Barn Country Club. He asked Mr. Deal why he did what he did in this community. Mr. Deal said it was because this was his home, and people needed fun things to do in their community for enjoyment. Mr. Burel said there is one other establishment on the lake, about a 15-minute ride away, where you can go to get pizza, a beer, enjoy the evening. And everyone rides right up the lake, and right past Lake Hickory Marina, to go spend their money in Burke County. He said he sees it every day, as people drive right by his house on their way to Burke County. He said he would like to see that economic development, the center of a thriving and an economic activity, right here in Hickory. He said the Boost Hickory bond supporters care about that, and he was one of the ones who encouraged and helped to support it. He said he would like to see Hickory be a place where people are willing to move, that he used to be a hiring manager for Corning, and a hiring manager for Transportation Insight, and he could not possibly count all of the times he was told by the potential engineers and analysts that he was trying to hire, that, no, we took a job down in Charlotte. Or, thanks for the offer, but I’m a 20-something and there’s just not much to do in Hickory. Or, thanks for the offer, but we’re going to Charlotte, or Atlanta, Raleigh, Winston-Salem, pick a city, he has heard them all.

Mr. Burel said he cares about this community, and he is still raising his family here, those that are not gone off to the Marines or elsewhere. He thanked the Commission for hearing his testimony regarding Mr. Higgs’ character, and the way he conducts his business. And on behalf of the needs and desires he has heard reflected from hundreds of people who utilize the lake, he thanked the Commission members for their time.

Mr. Mays asked if members had any questions for Mr. Burel, and there were none.

Mr. Crone asked Mr. Burel if he had any written documents to introduce as evidence and Mr. Burel said no.

Mr. Crone asked if any member of the audience had questions for Mr. Burel.

Mr. Shell asked if Mr. Burel has ever questioned any of the people who live up the lake, by the old George's, the place Mr. Burel spoke about earlier, to see if those residents had any complaints. Mr. Burel said it is not his business to do so, but on the couple of occasions that he did have the opportunity, their response was good. Mr. Shell interjected that he had done so. Mr. Burel continued, saying that he was sure there are those who would disagree with the positive response, but he did not heavily canvass the residents.

Audience member Pam Connelly said she would like to know how the number of beer drinkers being discussed would increase the economy in Hickory. Mr. Burel said he is not an economist, and cannot speak to that directly, but he did know that when people spend money, taxes are generated, that is relatively simplistic. He said he knows people are currently going to Burke County to spend their money now, and he would prefer they spend their money here.

Ms. Thompson asked how Mr. Burel came up with the number of people going up to the other business, and Mr. Burel said he does not know that number.

Another audience member said she has lived in the neighborhood for a year, and that it bothers her, coming across that bridge at 55 mph, and nothing to help you turn right on Limbaugh Lane. She said the traffic situation is such that it took her 35 minutes to get here this afternoon from her house right on Highway 321. She said there are a lot of reasons not to have a lot of traffic going down into Limbaugh. She said there are two sides to drinking.

Mr. Crone interjected and asked if there were any other questions.

Mr. Burel said he could not comment to the count of cars on the road, but he does know that we can count on Mr. Higgs to do what he says he will do, and if the Commission decides to pass the permit, he will do what is asked of him.

There were no additional questions for Mr. Burel.

Chris Barringer addressed Commission members. He said that he was born and raised here, is a small business owner, and has been for most of his adult life. He has known Mr. Higgs for over 10-years, and is extremely impressed with this young man, who is making an effort to do something that seems insurmountable. He said that, as Mr. Burel alluded to, he wants to see the young adults come to live here. He said that with his business, he does not have a lot of younger employees, and that many of them did not come to work for him because they chose to take jobs out of town and out of state. He really wants to see this succeed for a lot of reasons, and he is definitely for the permit, to help Mr. Higgs continue his successful business. Mr. Barringer said that with the River Walk coming, he thinks everything else that comes along will help benefit our young adults, and build our community back the way it used to be.

Mr. Mays asked if members had any questions for Mr. Barringer, and there were none.

Mr. Crone asked Mr. Barringer if he had any written documents to introduce as evidence and he said no.

Mr. Crone asked if any member of the audience had questions for Mr. Barringer, and there were none.

Heather Fleissner addressed Commission members. She said she owns a spa in Oakwood and has made an offer to purchase Georges on the Lake, across the highway from the marina. She lives in the Lake View Park community, and said she was not for or against the indoor bar at the marina, but was here to testify to Mr. Higgs character and her experience in dealing with him. She said she is a member of the von Drehle and Schrum families, and many of you know them. Phillip Shell interjected a comment on her statement, and Mr. Mays asked him to refrain, that he would have an opportunity to speak later. She said Mr. Shell is her cousin, and also her neighbor, and that his father is her 93-year old great uncle.

Ms. Fleissner said she does not live on that side of the community, and is not disputing that they may have noise on their side, but that her husband has owned their home since 1999 and she has lived there for seven years, since marrying. She said they have a boat and also had issues with the previous owners. She agrees with the others in her community who say the previous owners are irresponsible – there was a lot of drinking, a lot of partying, and a lot of noise. However, on her side of the neighborhood, she hears more noise from the Crawdads Stadium, especially when there are bands and games there, more than the former tiki bar. She said she could not attest to what they have to put up with on their side of the neighborhood, but what she can attest to is Mr. Higgs' character. She has been dealing with him for the past year, as a client of the marina, and said that she was one of his first boat slip renters. In the past, they kept their boat elsewhere, due to the previous owners, which was very inconvenient. She said when the marina came under new management, they met with Mr. Higgs and realized he was much more professional, a man of his word, and has improved the amenities, such as the docks.

Ms. Fleissner said she has been inside the bar, and it is very small. She does not believe there will be many more cars coming in and out for the bar and restaurant, more so than would be there to use the marina, because it is so small and parking is limited. She described a situation where she and her husband went to get in their boat at the marina, and that people had congregated in the area where the tiki bar used to be, drinking and making a lot of noise. She said cars were everywhere, so they could not park their car and go out on their boat. She called Mr. Higgs, who was in Florida at the time, knowing that he would not approve of this situation. He immediately took action and in a short time the group was gone. She said that anyone in the neighborhood, or owning a boat slip, could know that he will take care of any complaints.

There were no questions from Commission members for Ms. Fleissner.

Mr. Crone asked if there were any questions from audience members, and there were none.

Jack Fleissner signed up to speak, but declined, saying that his wife had covered their comments.

Bryan Powe addressed Commission members. Mr. Powe said he came into this with Mr. Higgs, with the idea of opening up the bar, but Mr. Higgs had said it would not get done soon, because there were a lot of things to be done before that was even on the table. Mr. Higgs approached him again in January and asked if he was still interested in pursuing the bar at the marina. He said he was, and Mr. Higgs introduced him to his business partners. While speaking with them, he reassured them that the problems from the past would not go forward, including how the business was run with complete disregard for the community around them, which would not be the way he would run the business. Mr. Powe said his entire plan for this business is to be more family-oriented, for people coming in off the lake, because it is not just grown-ups that pull up to the docks for gas, you have your kids with you. He said he has a child, Mr. Higgs also has a child, and they would both be there enjoying the water and going boating. He said he does not want that (type of) behavior around his kids; he does not want people stumbling around, drunk, using profanity, and things like that.

Mr. Powe said the capacity of the bar was set at 49 (patrons) because once you go over that, it becomes a different classification. He said 49 (patrons) would fit in there comfortably and they are not looking to have a lot of music or a jukebox, no live bands, they want it to be a place where you get off work and come in, and be able to talk with the person sitting beside you, not yell at them. He said what they want is to keep the noise down.

Mr. Powe said as for as the safety issue, that when alcohol is involved, and people in cars in general, there is always going to be a safety issue. He noted that on (Highway) 127, within 500-feet of a school and two churches, there are three bars, and two of them are open until 2:00 a.m. He said he understands that the neighborhood has concerns about cars going up (Highway) 321 by their house, but would venture to say the density is 10-times more, around Backstreets, Alessios's and Fourk, and he does not see any problems over there with safety. He said it would be heavily policed by the City of Hickory, coming across the 321 bridge, and he noted the Wildlife launch is directly across the lake.

Mr. Powe asked if there were any questions for him.

Mr. Mays asked if Mr. Powe is coming into this as the owner, or a manager, or what was his relationship. Mr. Powe said he would oversee the bar operation, and Mr. Higgs would have final say on all operations.

Mr. McBrayer asked, if the permit is approved, how many people they are planning to put to work. Mr. Powe said that, to start with, just himself, being hands-on, getting everything done. With 50 patrons, likely four or five people, part-time, would be there or on call.

Dr. Eldridge asked if they plan to serve food in the bar. Mr. Powe has talked to numerous local restaurants about having prepared foods available; they will not likely have a full kitchen, but will test it for a while, and see how it all develops.

Mr. Crone asked if Mr. Powe had any written documents to introduce as evidence and he said no.

Mr. Crone asked if any member of the audience had questions for Mr. Powe.

Mr. Shell said, have you ever noticed on (Highway) 127, which you alluded to, that thing right in the middle with stripes on either side. That's a turn lane – we don't have one of those. Mr. Powe said, I know, we do not. He said, in the last year, since the marina has been open, that he did not know for a fact, maybe they did as residents, had there been accidents there. Numerous audience members began speaking concurrently. Mr. Crone asked them to focus on questions, and that those wishing to speak would have an opportunity.

Ms. Thompson alluded to what Mr. Powe said about Viewmont, and said they do not have a noise problem. Mr. Powe said they have no plans for music, or a tiki bar. Another audience member said, and no plans for drunks? Mr. Shell said you will have a monopoly on the lake, selling beer. Mr. Crone again said everyone would have an opportunity to speak. He said that everyone was going to treat the others like they would like to be treated.

Christine Blakely said she is Ms. Walker's daughter, and said Mr. Powe has talked about the marina being a family area. She said they have lived there for years and it was not a very family-oriented place when they first moved there. She asked why he thinks people with families in boats, coming inside with their kids, would want to eat in a bar – how do you fit the bar with the family. Mr. Powe said many restaurants sell alcohol, and she interjected that he was not running a restaurant. Mr. Powe said Kickback Jack's sells a ton of alcohol, and that he was not saying the two go together, but it is there for the grown-ups. He said it would not be a "dive bar" it would be a very nice bar where people can come and socialize, hang out. He

said there will soon be a River Walk across the lake from the marina, and the dead space is not making anyone money – if it is not making anyone any money, there is not a need for it to be there.

Mr. Shell said, so you think, at our detriment, you should be able to make money, and Mr. Powe said he did not say that. An audience member said the River Walk is years away. Mr. Shell said, yes, it's years away. Mr. Powe said it has been voted on and that's what they've got coming. And someone said, not anytime soon.

An audience member asked if this bar would in any way encourage people to come off the lake and drink, then go back out on lake, causing accidents. Mr. Powe said he could not possibly answer this question or offer an opinion on it. She said that she means the access to alcohol, would it not encourage boaters coming in off the lake, drinking, then going back on the lake. Before Mr. Powe could answer, Mr. Burel asked him if there are government regulations in place for drinking establishments, and Mr. Powe said there are. He asked if he was familiar with them, and Mr. Powe said he is, and they are strictly enforced by ALE, and they are the same for anyone serving alcohol. Mr. Burel said, so if you are serving alcohol downtown at 7:00 or serving alcohol at any other time, your bartender is trained to avoid over-serving, and Mr. Powe said yes.

Mr. Crone reminded the audience that this is like a courtroom, and said they could ask any question they want to, but the issue is whether the applicant has met the criteria that Mr. Frazier had outlined. He said he was not trying to stifle anyone's free speech, and they could say they are for or against it, or don't like it or whatever, but the issue is whether the criteria has been met by the applicant.

Mr. Mays said this is not an argumentative session, and if anyone has a question for Mr. Powe, let it be directly related to his testimony; opinions are not dealing with facts, and his testimony is what we are dealing with tonight.

An audience member asked, if I come into your bar, how many shots of whiskey could I have before you tell me I cannot have any more. Mr. Powe said there is no set limit, it is up to him, but if ALE comes in, and in their opinion they think some is drunk, their opinion is the only one that matters.

Ms. Fleissner asked if there would be food served, and Mr. Powe again said he has talked to some restaurants about prepared foods. She said so then that changes the law doesn't it, and Mr. Mays advised her that over 50% of the facility's total sales would need to be food products for the law to change. She said that alcohol is sold at Chucky Cheese. Mr. Crone interjected, and asked if there were any questions.

Mr. Shell asked how many times ALE has come in, during the night, and Mr. Powe said very often, and after 9:00 pm is when ALE does most of their fieldwork.

An audience member asked if he knew the hours of operation for the bar. Mr. Powe said it would be seasonal, and it depends on how busy they are, so they will decide accordingly. She said, so you will decide, based on how busy you are, whether to close at 9:00 because we aren't busy tonight, or 11:00 pm, or we will be open until 2:00 am, and he said yes.

Another audience member began asking a question about people who come in to drink, and then go outside on the grounds. Mr. Crone again said he was not trying to stifle anyone's questions, but the issue here is whether there is evidence that shows he has met the criteria, and this has been outlined here.

There were no additional questions for Mr. Powe.

Mr. Mays asked if there was anyone else present who would like to speak in favor of this petition tonight, and there were none.

Mr. Mays said that now the persons against SUP 16-01 would speak.

OPPONENTS

Phillip D. Shell addressed Commission members. He said he lives directly above the proposed site. He said, first of all, whoever made this map that says “not to scale” is right, because (Highway) 321 is a big road, and it has a lot of traffic.

Mr. Shell said he was representing a couple of residents that live in the surrounding areas of the proposed bar site, and the first point he wanted to touch on is noise. He and his family have lived there since 1976, and he was born and raised in Hickory, and is a Hickory person. His family has had to deal with an inordinate amount of noise from day one, but that’s alright, they signed up for some of it. He said they live next to the airport, with jets coming and going; they live next to Highway 321, and it can be very loud; they have the Crawdads ballgames; and previously, they had the tiki bar. He said that he does not know these guys (making the petition for the permit) and he is not here to dispute their reputations. But he does know that the tiki bar came in there and they told the residents all of this same stuff, that there would be no music outside, and they would not do this or that, but they did, and the Hickory Police Department suffered under it, and Mr. Shell promised that they will suffer under it again.

Mr. Shell said the second thing is the accessibility – it is just the wrong place to have a drinking place. He said as a child, his father would pull into that marina with their boat, and that he would close his eyes, waiting for someone to crash into them from behind. He said there have been an immeasurable amount of accidents there, and he challenged all members of the Commission to go out there at 6:00 pm, when most of these “drinkers” would be there, and it will be a madhouse. He said with all of the MDI trucks, that just trying to make a 90-degree turn off that road is taking your life in your own hands. He said they do it every day just coming out of their neighborhood.

Mr. Shell said the third thing is the emergency services, and asked who is going to take care of this place. He said that, having said all of this, he has no objections to the bar having a license to sell alcohol, and noted they would have a monopoly on it, because there is not another person with a license to sell beer to go. He said there are a lot of better ways to increase the tax base than putting a bar right below so many residents’ houses, and he implored all of the members to go there, if they haven’t already been. Using the pointer, he showed the location of his house on the map, and said there is a “bowl” (in the topography) that creates noise – they hear all sorts of conversations at their homes, the sounds from the people building the docks, and other things. He said he loves the water, has boated all of his life, but this is not the place for a bar. He said his 93-year old father, who is a war veteran, and his 85-year old mother, both live with him, and he believes they have the right to live out the rest of their lives in peace.

Mr. Mays asked if anyone had a question for Mr. Shell, and there were none.

Mr. Crone asked if Mr. Shell had any written documents to introduce as evidence and he said no.

Mr. Crone asked if any member of the audience had questions for Mr. Shell.

Ms. Fleissner asked how much he believes having a bar there would increase traffic, as opposed to just having a marina there. Mr. Shell said the noise is first, the traffic is last.

Ms. Fleissner asked what Mr. Shell believes the difference is in someone purchasing alcohol there, in the store, and then taking it on their boat and drinking, and then getting in their car and driving home, how is this different than them consuming it there in the bar, that it is up to individuals to follow the law. She said

she does not drink and drive, when they go out on their boat her husband drinks and she drives. She asked how Mr. Shell feels it would change, selling alcohol in the store, as opposed to selling it in the bar. Mr. Shell said he could tell her exactly, that when people go to the bar – and he said that he is a drinker – that if he goes to a bar and has a couple of drinks, he gets loud, and the next thing you know, he gets a little louder. He said, next we want to move outside, because it's beautiful out there, and the next thing you know we're having a party. And next, we are destroying a bunch of people's solitude. Ms. Fleissner agreed.

Ms. Fleissner said that, since she lives on the other side of the neighborhood, her concern is for him and also her 93-year old great-uncle (Mr. Shell's father). She asked Mr. Shell if he can hear noise from there when it is inside the building. He said he was not sure, he has not been tested yet; when the tiki bar came, they built that deck very quickly, so he never had the opportunity to hear if there is noise coming from inside the bar, but he could sure hear it coming from the outside.

An audience member said she understands that he lives directly above the marina, and Mr. Shell said yes. She said she could hear noise coming from off the top of the hill, a lot of landscaping and children's noises, which you are going to hear in communities. She said she didn't know what kind of noises he was hearing, but she has heard a lot of commotion there. Mr. Shell said he didn't hear much landscaping noise at 11:00 at night.

Mr. Crone again asked for questions only.

There were no additional questions for Mr. Shell.

Mr. Mays asked if the document Mr. Shell had at the podium was evidence he would like to submit, and he said no.

Frances M. Walker addressed Commission members. She said she lives on 3/4 of an acre, right above the marina, and the bottom part of her property is the end of Limbaugh Lane, so she goes in Limbaugh Lane, which is a challenge. She said it is a one-car passage, on a curve, and that she has to back her car up to let someone else in, which is a challenge. On top of that, coming off the bridge, the visibility is bad. She said they have lived through the noise that cars, motorcycles and people bring to a bar. She said you can call it any name you want to, but it is what it is, and like the other people have said, they migrate outside (of the bar). She said there were a few occasions where people would sit out in their boats with their music going, but the neighbors have taken care of that.

Ms. Walker said she is also disturbed about the danger for the people coming out of Limbaugh Lane, after being in the party, and pulling in front of people coming down (Highway) 321, that this is a disaster waiting to happen, in her opinion. She is a product of that kind of experience, so she does not want it to happen to any other people. She has relatives and friends living off of (Highway) 321, that drive it every day. And you come over the bridge and someone pulls out in front of you – we won't say they are impaired, we'll say they are using bad judgement, but there you are.

Mr. Mays asked if Limbaugh Lane is the only access to her property by car, and Ms. Walker said yes, that she could walk down the stairs, but this is the only access by car. As she answered, an audience member interrupted Ms. Walker with a question, and Mr. Mays said this is a quasi-judicial hearing, it is like court, and he advised the audience they will not be openly speaking out again, until it is their turn to ask questions of Ms. Walker.

Ms. Walker said the noise problem there could be verified by the police department, because she kept good records of all that, and they dealt with it too many times. She said it has already been stated, but they have seen where the emergency and the fire department have had to come in, and they have great difficulty

turning around. And, if someone is coming in, is the fire truck going to back up on the road to let them in? She said, and the person that is coming in, they cannot back up onto (Highway) 321, because they would be backing into traffic and there is no place for them to go.

There were no questions for Ms. Walker from Commission members.

Mr. Mays asked if Ms. Walker had written evidence to submit, and she said no, that they all signed a petition earlier.

Mr. Mays asked if there was anyone in the audience who would like to ask Ms. Walker a question, with regards to her testimony.

Heather Fleissner asked Ms. Walker if she drives through the marina to get to her home, that she was confused about the location of her home. Ms. Walker said yes, she has a right-of-way to get to her property from Limbaugh Lane. She said her property borders the full length of the marina, and then she has a section that goes down to the lake, at the end of Limbaugh Lane. Ms. Fleissner asked if the marina was there when she bought her home, and Ms. Walker said yes, she has lived there for 36 years.

An audience member asked Ms. Walker if she has two entrances to her property, and she said yes, there are two. There is an entrance to her property at the end of Lake View Park, but the only access to the bottom of her property is through Limbaugh Lane.

There were no additional questions for Ms. Walker.

Dianne Taylor signed up to speak, but declined, saying that she had nothing to add.

Greg Parlier addressed Commission members. He said he had lived in Lake View Park since September 1964, and right above the marina. He said it had always been a nice place to live, until the tiki bar, and also George's (at the Lake) was a problem for noise. He said the only thing he has heard tonight is that alcohol is the only way to raise money. He said as he was raised, alcohol is not good for anything, which is not right, in his opinion as a Christian. He said it is hard to get out on (Highway) 321, although a kind soul will let you out at times. He feels uncomfortable about this because they have been through it so many times, and now have to go back through it again. He said he is against it.

Mr. Mays asked if there were any questions for Mr. Parlier, and there were none.

Ron Weber signed up to speak, but he declined.

Jim Thompson addressed Commission members. He has lived in Lake View Park for 16 years, and said their home is about 150-feet from the marina property line. He said that in 2008, when the tiki bar came in, it was an absolute nightmare, and he thinks they all agree on that – loud music, rowdy bar patrons, motorcycles, and people whooping and hollering at all hours of the morning. He was grateful that City Council finally intervened, and they told the residents to call the police any time the noise was unbearable, which they did. He said that Frances Walker documented the number of times she called on the calendar by her telephone, and he had typed it up for her before they went to City Council years ago. He said he still has it, just in case anyone here has forgotten what a bad situation it was at that time, and plans to submit it as evidence tonight.

Mr. Thompson said he heard the definition of idiocy is doing the same thing over and over again, but expecting a different outcome, and that no offense to anyone here tonight, but he really thinks it applies here. He said several people discussed the traffic problem, and it really is difficult, because you are at the end of a bridge, and there is limited visibility because of the guardrails. He was coming across (Highway) 321 bridge about two weeks ago, and suddenly everyone started stopping toward the end of the bridge. There was a funeral procession coming on the opposite side, and people stopped out of respect for the funeral procession. No problem, he saw them coming and slowed down, but the guy behind him did not, and all of a sudden you hear his tires squealing, brakes slammed on at 55 mph. Luckily, he got it under control before he slammed into his car or the one beside him, but you're on a bridge, and there is nowhere to go.

Mr. Thompson said they had talked to the neighbors in Lake View Park over the past weekend, and asked them to sign a petition, if they were against granting the permission for them to open a bar at the marina. He said that overwhelmingly, nearly every property owner signed the petition opposing the bar, and he would also like to submit this as evidence. He said that they had all made the single biggest investment of their lives when purchasing the homes they live in, and they did so knowing there was a marina there. But, they did not know they would have a bar in their backyards. He said history does have a way of repeating itself, and they do not want to ignore the problems they had in the past. He said that none of the neighbors want to live next to a bar, just like they don't want to live next door to an adult bookstore. He said if they are forced to sell their homes, for their own peace of mind, and our target demographics are alcoholics who drive a moped because they lost their driver's license, then we are in serious trouble. He could not say how much their property value would decline if the bar is allowed to open, but said he did know with certainty that he and his wife would not have purchased their home if the marina bar existed at that time.

Mr. Thompson said a bar at a marina is like an anchor magnet to people on the lake, and many by car, that just want to party. He said the problem is not just from noise at the bar itself, that he understands we are talking about an indoor bar here. But the patrons, when they leave the bar, if they are not ready to stop partying, they carry on outside. Living on the lake, he said it's okay to have a boat blasting loud music when it is passing by for a minute or two, and then they are gone. But when they camp out on the water directly below their homes for hours, blasting their music and showing off for people at the marina, subwoofers rattling the windows in the house, then it's a completely different story. Along these lines, Mr. Powe had mentioned there could be a police presence out on the water. He knows the City of Hickory Police have a boat that generally lives in the parking lot at the police station. In the 16 years he has lived there, he has seen the boat on the Fourth of July and on Labor Day, and that is just his testimony, he does not know how many other times they take the boat out, but those are the only times he sees it. He said it's not like the City of Hickory police boat will be out there patrolling the waters, but if we have to get them to do that because someone wants to sell alcohol to people on the lake, then that is a waste of the Hickory Police Department's funds.

Mr. Thompson, speaking on behalf of the residents of Lake View Park, sincerely asked the Commission to consider these facts before making their final decision. He said he believes he speaks for most of his neighbors in saying they are more than willing to support the marina, boating, and fishing activities, but they cannot support a bar and all the problems that come with it in their neighborhood and backyard.

Mr. Thompson said one of the residents in their neighborhood is Edgar Starnes, a member of the North Carolina House of Representatives, and House Majority Leader, retired. He could not be here tonight, but asked that the letter he wrote be read. Mr. Thompson read the letter aloud, and said it would be submitted as evidence.

Mr. Crone asked Mr. Thompson to submit his documents to the clerk as evidence, and he did.

The document “Tiki Bar Timeline of Disturbances (recorded and dated by Francis M. Walker)” was submitted and entered into the record as Exhibit B.

The document “Lakeview Park residents opposing Special Use Permit (SUP) 16-01” was submitted and entered into the record as Exhibit C.

The letter from NC House Representative Edgar V. Starnes was submitted to the Minutes Clerk, and entered into the record as Exhibit D.

Mr. Crone asked if anyone had any questions to ask of Mr. Thompson.

Mr. Higgs said Mr. Thompson spoke about motorcycles, traffic noise, drinking, property values, boats hanging out with loud music, and the tiki bar. He said he would touch on a couple of these topics, and there were certain things he could control and others he could not. Mr. Crone interjected, saying this was not a question. Mr. Higgs asked if Mr. Thompson believed he would be able to police any of these activities, whether it was a boat owner who arrived on a motorcycle, or a boat anchored out in the water with loud music playing, is there anything that Mr. Higgs could do to stop him from stopping in the water 50-feet from the marina, any way he could address this personally or resolve it. Mr. Thompson said he was not shifting blame onto Mr. Higgs, and in no way is saying that it would be his fault. But what he was saying is that when you create this anchor magnet for people on the lake who want to party, that’s where they are going to be. Mr. Thompson said, as it is now, they cruise by, you hear it for a minute and then they are gone; but when they sit out there for hours, then that is different. He said when people leave a bar at the marina, they are not ready to go home. They hang out, and people in the boats want to show off and impress the others with their sound systems.

Ms. Fleissner asked how long there has been a bar there, while he owned his home, was it only the previous bar owner, and Mr. Thompson said yes.

Ms. Fleissner asked how many of the previous marina owners did the community have issues with, was it only the previous owner, and Mr. Thompson said yes.

Ms. Fleissner asked if they ever had any noise complaints related to the marina owners now. Mr. Thompson said no, but there is no bar there now, and based on history, that is what they are most fearful of, and why they cannot support this.

Ms. Fleissner said the letter from Representative Edgar Starnes had addressed only an outdoor tiki bar, it said specifically tiki bar, it did not say an indoor bar. Mr. Thompson did not have a copy of the letter for reference, since he had already handed it to the clerk. Mr. Crone said if he does not know, it is fine. Mr. Thompson said he was not sure if Mr. Starnes’ letter had specifically mentioned a tiki bar or not.

Mr. Shell suggested that Mr. Starnes could be phoned and asked to clarify his letter.

Mr. Mays asked if there were any additional questions for Mr. Thompson, and there were none.

The letter from NC Representative Edgar Starnes was handed to Mr. Mays for review.

Patty Thompson addressed Commission members. She said her husband had probably covered everything she wanted to say. Ms. Thompson referenced a document as she talked, a copy of the City of Hickory’s Master Land Use Plan Amendment Analysis, from SUP 03-19(B), regarding applicant Lake Hickory Marina II, LLC, where the staff did not recommend approval, and noted it discussed requested action, background, potential, land use and zoning, water and sewer. She said this is where she found out they

were considered Primary Residential, at least according to Caldwell (County). At the end of this, it states their Recommended Action. She said they based what they prepared, for people in the neighborhood to sign, on the five different points made in the Recommended Action. She said that SUP 03-19(B) was not approved. The Special Use Permit that they wanted at the time was inconsistent – and nothing has changed here – with the recommendation of the Hickory Comprehensive Land Use and Transportation Plan, commonly referred to as Hickory by Choice, which classifies this area as Primary Residential.

Ms. Thompson said point #2 in the document says, “Will not conform to all applicable standards of the City’s Land Development Code.” She said this was something they came up with, but #3, #4, and #5 are more applicable to them, the neighborhood. She read #3 “Will be incompatible with adjacent uses in terms of scale, site design and operating characteristics (traffic generation, noise and external impacts).” She made note of the journal that Ms. Walker has kept from the nights that she had so many issues, and that they all had the same ones, but most of them did not keep any type of journal. She said they all lived through it and it was mind numbing, she wanted to move out of her house, and got into many objections with her husband, when he would say to her that you don’t move out of your house over this, or whatever. She said it got really, really bad, and ever since then, life has changed for them, because of the idea that it could possibly spring up again. Ms. Thompson said she was told that Ms. Walker will sell her house, if this goes through, she is going to sell her house; if she sells her house, Ms. Thompson plans to sell her house, and then she has a feeling that other residents in attendance will sell their houses. It is going to be how many houses are we going to sacrifice for this, for putting four people to work, possibly, to make a lot of families happy on the lake, and to put a lot of people out there that maybe should not be out there drinking. She said the police were called constantly, it was awful, and they were over there consoling her, all the time, 9:00 at night, over there consoling her, and we were not normally over at her house at 9:00 at night. And then at 12:00, she didn’t call us, she suffered through it; the woman is taking care of the sixth great-grandchild in her family, five days a week. She is not sitting there, just doing nothing, and can just do without her sleep during the evening.

Ms. Thompson said, referring to point #4 in the document, again, there are not adequate wastewater (sewer) services. She said the septic tank from the property was shown to be deficient for the proposed use of the sustained drinking establishment, which will be serving food. She said if this septic tank of the proposed bar fails, the waste eventually makes its way to the lake, and possibly, if there’s a problem with the water, it’s going to come up, not in their yard, but they know what’s going to happen. And they know that the Hickory intake is right there at the middle of the bridge.

Ms. Thompson said, referring to point #5 in the document, she said the Hickory City Fire Department was seen by the neighbors, attempting to turn their fire engine around in the parking lot, in a parking area that was virtually empty. So that, undoubtedly, is not going to be very good for anyone in that bar, if something should happen. She said the vehicle struggled to turn around, and virtually, no other cars were there to obstruct it; Limbaugh Lane is one-lane, and two cars cannot pass each other to get out of the way.

Ms. Thompson said she listened to the people who spoke, who were for this, and said that Troy Higgs seems like a really nice guy. She said she was sure he does a really good job, and has great intentions, and that he refers to this, all the time, as something for the family. And granted, in a good part of the day, the marina would be for the family, and in a good part of the night, it is going to be for people that just want to come there and drink.

Ms. Thompson said Mr. Burel seems like a very nice man, too. But, she thinks that you cannot control the undesirables, you cannot control the drunks, that they have been through that. They yell nasty, ugly obscenities at them (the neighbors) and they get angry, they get nasty. She said the pizzeria, that is down there where you (Mr. Burel) are talking about, where George’s on the Lake was and it’s now a pizzeria, she and Mr. Thompson canvassed it last weekend. They went around to the neighbors to find out what happened there, and were told that one man absolutely sold his house, because the toilet water was shaking,

due to the subwoofers. And, another man cannot sell his house, and he is angry as he can be. She said that, yes, there are impacts of this type of thing, and this is not like a normal drinking establishment, like Backstreets or one of these other places, that are along a street. We're talking about a marina here, that everybody there wants to go outside, and everybody loves the ambience of the marina. So, it is a draw, it is a magnet to people, it's a magnet for the boats.

Ms. Thompson said, do you know why those people left the back of their house, at 12:00 at night, the ones who wouldn't leave, and had their subwoofers on? It was because they had a big light, this big, and they went through two of them. And they had to hone in on them, it was like a big spotlight, and they were dancing on board, and making fools of themselves, and they had their music going, and she was sleeping with earplugs – and she can't go through this, and she doesn't want her neighbors to go through this. And their homes will be sacrificed, they will have to leave, they are working-class people. She said they will take a hit on the value of their house, they tried to get an appraiser to come out and go to Ms. Walker's house because she is ground zero for them – she can throw a stone to the top of that building that's going to house that bar. So, she tried to get someone to come out and she was told they couldn't do this, it's hypothetical, this is something that we can't just say it's worth this and then, because, we don't have those figures. But, she said she could tell all of them (the Commission members), that if they were faced with coming in to where she lives and buying her house from her, knowing full well what is going on, you would say no, you wouldn't even come and look at it. She ended her comments.

Mr. Mays said that she had referenced a previous Special Use Permit, and what was that exactly. Mr. Frazier said it was a copy of the City of Hickory's Master Land Use Plan Amendment Analysis, from SUP 03-19(B), and was from 2003, as she had indicated. He said it was the agent, James Surane, and the requested action at that time was to amend the Planned Development Master Land Use Plan, to allow outdoor live entertainment, outdoor sales of food and alcohol, a freestanding boat storage rack, etc., and that it was subsequently denied, by your body (the Hickory Regional Planning Commission.) Ms. Thompson said that when she referred to this, what she takes from it is the septic tank and her concerns about that.

Mr. Mays asked if anyone had a question for Ms. Thompson, in regards to her testimony.

Mr. Higgs asked Ms. Thompson if she has seen the interior of the building, where the bar would be housed. She said she had been in it, but it had been awhile. He said she spoke of subwoofers, and asked if she had seen the stereo system that is in there, inside the area where the bar will be, and she said no, it has been a few years, that it had lain bare for a while. Mr. Higgs said his speakers were small, with few decibels, and most cars can produce more sound, there are no subwoofers.

Mr. Crone advised Mr. Higgs that there would be an opportunity for rebuttal, and asked if anyone else had questions for Ms. Thompson.

A member of the audience said she guesses she has not really understood it, that this is going to be under the jurisdiction of the Hickory Police, the county ambulances. Mr. Mays interjected, and said he does not believe this relates to Ms. Thompson's testimony, and that she could ask this question later in the hearing. Ms. Thompson said the only thing she had said was about the fire engine not being able to turn around.

Another member of the audience said she understands Ms. Thompson had called the police a couple of times, and Ms. Thompson said many times, many times. The audience member asked if they had responded, and Ms. Thompson said they definitely responded, they responded and the marina would turn the music down, then turn it right back up again. The audience member asked if there is a current process in place at the City of Hickory for warnings, if you violate the noise ordinance. Ms. Thompson said she did not know, and asked Mr. Frazier if he knew. He said he does believe they issue warnings.

Heather Fleissner asked, the noise complaints that they (the neighbors) had, was this music coming from outside at the Tiki Bar, or inside at the restaurant. Ms. Thompson said it was both, they could still hear it once they were inside. It was outside, it was inside, there were people who were – we’re not talking only about music, we’re talking about rowdy people, yelling and just, you know, rowdiness out there, it’s not just music, it’s crazy behavior. She saw a fight, a fight between her neighbor and someone – because people were lining up to get into the marina, and there was an altercation between one of the people in their boat who was trying to get closer in, and then the property owner telling them to, basically, back it up. She saw some cursing going on, and it was not good. Ms. Fleissner said that was an issue with someone in a boat, and Mr. Mays interjected, saying Ms. Thompson had answered the question.

There were no additional questions for Ms. Thompson

Mr. Mays asked Ms. Thompson to submit the document as evidence, and she said she was not sure she should. Mr. Crone said it corroborates the statements she made during her testimony, and should be entered into the record. Ms. Thompson submitted the document “Master Land Use Plan Amendment Analysis” to the Minutes Clerk, which was entered into the record as Exhibit E.

Mr. Mays asked if anyone else would like to speak against this petition. There were no other speakers.

Mr. Mays said if there were no additional questions or speakers, there would now be time for rebuttal.

REBUTTAL - PROPONENTS

Mr. Mays asked if any of the proponents wanted to present rebuttal to the testimony given. Mr. Crone said any further evidence could be presented. Mr. Mays asked that this evidence be directly related to why this petitioner should not be allowed to have a Special Use Permit, that is what is being discussed, his business is already established, as far as the marina goes, and he is applying for a Special Use Permit to have a bar, a drinking establishment. So, if anyone has something to say regarding why it does not meet the criteria that the Land Development Code sets forth, that is what we are here to make judgment on – does it or does it not meet the requirements of the Land Development Code.

Mr. Mays asked Mr. Higgs and Mr. Powe if they had any further comments or questions, and neither one of them did.

There were no additional questions for, or further comments from, the proponents, and no further evidence was presented.

REBUTTAL - OPPONENTS

Mr. Mays asked if any of the opponents wanted to present rebuttal to the testimony.

Mr. Shell said it is not new testimony but that (pointing at Mr. Frazier) this gentleman right here had shown that it was not in the requirements of Hickory City, so that should be enough said.

There were no additional questions for, or further comments from, the opponents, and no further evidence was presented.

The Public Hearing was closed.

Mr. Mays asked for discussion on the proposal. He said the discussion was now among the Commission members only, and they may choose to question anyone presenting testimony here tonight. He asked

members to discuss whether this does or does not meet the criteria. Further, he said he would like to comment on Ms. Fleissner's earlier question regarding Mr. Starnes' letter. After reviewing the letter, Mr. Mays said it was not necessarily a tiki bar that Mr. Starnes referenced, he did not say "tiki bar" in the letter, it just says "a similar bar" in the letter. He said this was an answer to the earlier question about whether Mr. Starnes had referenced a tiki bar.

Dr. Eldridge said this is really about a new application, and that he does understand how everybody else feels about having this all happen to them again. He said his biggest opposition is due to everything that was presented at the beginning (the staff report). There is so much to be dealt with before he can even begin this project – all the road (issues) and the sewage, the parking, he does not know how you get past all of that, especially for just a bar, a small bar. And, that this was his point, how to get past that. Mr. Mays said that, if the Commission approved it, there were conditions that needed to be set forth and met, prior to them being able to have an establishment. He asked Mr. Frazier if that was correct, and he said yes. Mr. Mays said there are conditional reasons that the staff had presented in their testimony. The applicant would have to meet these, such as the paved parking, the required number of parking spaces, the road access, so there are certain requirements, whether they approve or disapprove it, there are requirements that have to be set forth before this would be allowed to happen there. Dr. Eldridge said he understands that, and his point is there are a lot of big hurdles before the applicant – even if it is approved, it would be approved with a large number of conditions to be met. Mr. Mays said correct. He again asked, does the applicant, with what he presented in testimony tonight, meet the requirements for a Special Use Permit.

Mr. Hunt said he likes the marina and has visited it many times over the years, related to fishing activities. He said it is a nightmare getting off Highway 321 to turn down that road and into the marina, with all the traffic coming up behind you so quickly. He said he knows bars, and had been affiliated with a bar occupying 200 people in the past. Mr. Hunt said if this bar were packed with people, and a fire truck came to the property, the cars would need to all move out of the way, and then there would be no way to get out of there. He said that was his biggest issue with this matter. He said the road is a problem, it is barely wider than a car, it curves and suddenly you are up at (Highway) 321 and the bridge. He said the sightline on the road is poor, and also, you cannot see when you are coming down the road from the bridge, it is dangerous through there.

Mr. Mays asked if there were any additional questions for anyone, and there were none.

Mr. Mays said Special Use Permit 16-01 was before the Commission for their consideration. He asked members whether they should deny or approve the application.

Wallace Johnson moved, seconded by Barbara Clemons, to deny Special Use Permit 16-01.

Mr. Mays stated that as a quasi-judicial hearing for a Special Use Permit, members would need to vote individually, stating their reasons as to why they were voting for or against the petition.

Mr. Hunt voted to deny SUP 16-01, based on the review criteria presented in the staff report, the testimony from both sides, and the recommended action by staff.

Mr. Johnson said that he appreciated and commended everyone for coming to present their strong opinions in testimony tonight, but that based on the facts, he voted to deny SUP 16-01, because it does not comply with all the requirements of the City's Land Development Code, or meet all the criteria required for a special use permit.

Dr. Eldridge voted to deny SUP 16-01, based on the staff not recommending it for approval, and there would be too much required for the applicant to change in order to meet all of the conditions.

Mr. Mays voted to deny SUP 16-01, based on the fact it does not meet a lot of the requirements of the Land Development Code, such as parking, and the fire and safety is another main issue there because it affects not only fire, but also police and utilities, and as the staff recommendation advanced many conditions that would need to be met for approval.

Ms. Clemons voted to deny SUP 16-01, based on the one-lane road being a major issue for the people coming from Hwy. 321, plus the noise affecting the adjacent neighborhood, and considering the staff recommendation.

Mr. Kerley voted to deny SUP 16-01, based on the staff recommendation, his understanding of the road situation after driving down to the property and returning back to Hwy. 321, the parking circumstances, and because he does not believe the applicant can accomplish everything needed to meet the requirements.

Mr. McBrayer said he also wanted to thank everyone for coming to the hearing, and that as much as he is a proponent of businesses in the City employing people, he could not with a clear conscious vote for this, and so voted to deny SUP 16-01, and based on the examples 1 through 9 of the SUP review criteria, that none of the testimony or evidence from the proponents had swayed his mind from what was presented in the record, and also the staff recommendation is accurate.

Mr. Hedrick voted to deny SUP 16-01, based on the finding of the facts, and it does not meet many of the requirements in the Land Development Code.

Mr. Mays stated Special Use Permit 16-01 had been denied by the Hickory Regional Planning Commission.

OTHER BUSINESS

Mr. Mays asked if there was any additional business to come before the Commission, and there was none.

Adjourn: Sam Hunt moved, seconded by Bill McBrayer, to adjourn. There being no further business, the meeting adjourned at 8:12 pm.

Randall Mays, Chairman
Hickory Regional Planning Commission

Anne Starnes, Minutes Clerk
City of Hickory